

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIVANDE INC,

Plaintiff,

v.

USA,

Defendant.

No. C- 05-02117 MJJ

**PRETRIAL ORDER**

It is hereby **ORDERED** pursuant to F.R.C.P. and the Local Rules of this Court:

**TRIAL DATE:** Monday, **September 25, 2006** at 8:30 a.m., Courtroom 11, 19th floor.  
**TRIAL LENGTH** is estimated to be **2** days. ☐ jury ☒ court

**PRETRIAL CONFERENCE DATE:** Tuesday, **September 12, 2006** at 3:30 p.m.  
(Counsel who intend to try the case must attend the pretrial conference. Counsel shall be prepared to discuss all aspects of the case, including settlement. Pretrial to conform to the attached instructions.)

DISCOVERY LIMITS:	Depositions:	Pltf.	<b>5</b>	Def.	<b>5</b>
	Interrogs:	Pltf.	<b>35</b>	Def.	<b>35</b>
	Doc. Req.:	Pltf.	<b>35</b>	Def.	<b>35</b>
	Req. Adm.:	Pltf.	<b>35</b>	Def.	<b>35</b>

(Per Federal Rules of Civil Procedure and Local Rules, subject to any provisions below)

NON-EXPERT DISCOVERY CUTOFF is: **4/28/2006**

DESIGNATION OF EXPERTS:                      Pltf.    Def.

EXPERT REPORTS:

DESIGNATION OF SUPPLEMENTAL/REBUTTAL EXPERTS:

SUPPLEMENTAL/REBUTTAL REPORTS:

Parties shall conform to Federal Rule of Civil Procedure 26(a)(2).

EXPERT DISCOVERY CUTOFF is: .

DISPOSITIVE MOTIONS SHALL be **heard** by: **6/13/2006**


SETTLEMENT CONFERENCE shall be held before Magistrate Judge **Spero** and scheduled to take place **July 2006**

FURTHER STATUS CONFERENCE: at 2:00 p.m.

**ADDITIONAL ORDERS:**

**PLAINTIFF IS ORDERED TO SERVE A COPY OF THIS ORDER ON ANY PARTY SUBSEQUENTLY JOINED IN THIS ACTION.**

Dated:                      9/20/2005

  
\_\_\_\_\_  
MARTIN J. JENKINS  
United States District Judge

## PRETRIAL INSTRUCTIONS

Counsel SHALL meet and confer in good faith in advance of complying with the following pretrial requirements for the purpose of preparing for the Pretrial Conference and to discuss settlement.

### A. 20 CALENDAR DAYS PRIOR TO PRETRIAL CONFERENCE

The following shall be accomplished not later than **20 calendar days** prior to the scheduled Pretrial Conference:

1. **PRETRIAL STATEMENT:** The parties shall comply in all respects with FRCivP 16(c)(1)(2)(3)(4)(7)(13)(14)(15)(16)

2. **JURY INSTRUCTIONS:**

a. Joint Set of Agreed Upon Instructions: The parties shall jointly prepare a set of agreed upon jury instructions, and shall file an original and two copies of same **20 calendar days** prior to the Pretrial Conference.

b. Separate Instructions: Separate instructions may be submitted only as to those instructions upon which the parties cannot agree. Each separate instruction shall note on its face the identity of the party submitting such instruction.

No later than **10 calendar days** prior to the Pretrial Conference, the party or parties objecting to an instruction shall file a written objection to such instruction. The form of the objection shall be as follows:

(1) Set forth in full the instruction to which the objection is made;

(2) Provide concise argument and citations to authority explaining why the opposing party's instruction is improper; and

(3) Set forth in full an alternative instruction, if any.

An original and two copies of the separate instructions with objections shall be filed **10 calendar days** prior to the Pretrial Conference.

c. Substance and Format of Instructions: The instructions shall cover all substantive issues. Proposed instructions shall be consecutively numbered. Each proposed instruction shall be typed in full on a separate page and cover only one subject, to be indicated in the title. Citations to the authorities upon which the instruction is based shall be included. Instructions shall be brief, clear, written in plain English and free of argument. Pattern or form instructions shall be revised to address the particular facts and issues of this case.

d. Preliminary Statement and Instructions: If the parties wish to have a preliminary statement read to the jury, and/or preliminary instructions given to the jury, they shall jointly prepare and submit to the Court, **one week** prior to trial, the text of the statement and instructions, clearly marked.

e. Clean Copies: The parties shall be prepared to submit two clean copies of instructions without citations, titles or attribution on or before the date trial commences.

3. **FINDINGS OF FACT and CONCLUSIONS OF LAW:** In non-jury cases, each party shall serve and lodge with the Court proposed findings of fact and conclusions of law on all material issues. Proposed findings shall be brief, written in plain English and free of pejorative language and argument.

4. **EXHIBITS:**

a. Provide Copies of Exhibits to Other Parties: Each party shall provide every other party with one set of all proposed exhibits, charts, schedules, summaries, diagrams and other similar documentary materials to be used in its case in chief at trial, together with a complete list (**see attached**) of all such proposed exhibits. Voluminous exhibits shall be reduced by elimination of irrelevant portions or through the use of summaries. Each item shall be pre-marked with an exhibit sticker (see attached), plaintiff's exhibits with numbers, defendant's exhibits with letters. If there are numerous exhibits, they should be provided in three-ring binders with marked tab separators. All exhibits which have not been provided as required are subject to exclusion.

b. Stipulations re Admissibility: Prior to the Pretrial Conference, the parties shall make a good faith effort to stipulate exhibits into evidence and be prepared to place their admission on the record at the Pretrial Conference. If stipulation to admission in evidence is not possible, the parties shall make every effort to stipulate to authenticity and foundation absent a legitimate (not tactical) objection.

c. Provide Copies of Exhibits to Court: One set of exhibits shall be provided to the Court on the **one week prior to trial.** Each set shall be in binders, tabbed and indexed.

d. Disposition of Exhibits After Trial: Upon the conclusion of the trial, each party shall retain its exhibits through the appellate process. It is each party's responsibility to make arrangements with the Clerk of the Court to file the record on appeal.

5. **WITNESSES:**

a. Jury Trials: The Pretrial Conference Statement shall include a witness list required by FRCP 16(c)(7). Expert witnesses shall be listed separately. In addition, in the case of expert witnesses, the summary shall **clearly state the expert's theories and conclusions and the bases therefor and SHALL be accompanied by a curriculum vitae**; if the expert has prepared a report in preparation for the testimony, a copy thereof shall be furnished to opposing counsel. Witnesses not included on the list may be excluded from testifying.

b. Non-Jury Trials: In non-jury cases, each party shall serve and lodge with the Court a written narrative statement of the proposed direct testimony of each witness under that party's control in lieu of a summary. Each statement shall be marked as an exhibit and shall be in a form suitable to be received into evidence.

6. **MOTIONS IN LIMINE:** Motions in limine are limited to motions to exclude specific items of evidence (i.e. specific testimony or exhibits) on a ground and upon such authority as would be sufficient to sustain an objection to such evidence at trial. Motions in limine shall be filed and served no later than **ten Court days** prior to the date set for the pretrial conference. Any party opposing such a motion in limine shall file and serve its opposition papers no later than **five Court days** prior to the pretrial conference. No reply papers will be considered.

**B. 10 COURT DAYS PRIOR TO PRETRIAL CONFERENCE**

The following shall be accomplished not later than **10 Court days** prior to the Pretrial Conference:

1. List of Exhibits With Stipulations and Objections - The parties shall file with the Court a list of all exhibits admitted by stipulation; and a list of all exhibits as to which objections have been made, with a brief notation indicating which party objects and for what reason.

2. Objections to Other Evidence - In addition to exhibit lists, counsel shall confer with respect to any other evidentiary objections in advance of the Pretrial Conference as required by Local Rule. Each party shall file and serve a statement briefly identifying each item objected to, the grounds for the objection and the position of the offering party as stated at the conference.

3. Voir Dire and Verdict Forms - Each party shall serve and file proposed questions for jury voir dire and a proposed form of verdict.

**C. OTHER PRETRIAL MATTERS**

1. Citations - In all Pretrial Statements, memoranda of points and authorities and jury instructions, citations shall be as follows: (1) all United States Supreme Court citations shall be to both the official reporter and to the West Supreme Court Reporter, (2) all citations to California state courts shall be to both the official reporter and to the West California Reporter, and (3) all citations to the courts of any other state shall be to both the official reporter of that state and to the West Regional Reporter.

2. Settlement Conferences - Any party utilizing another form of Alternative Dispute Resolution who wishes to arrange a settlement conference before a judge or magistrate judge thereafter may do so by contacting the Courtroom Deputy.

3. Copies - Unless otherwise indicated, each document filed or lodged with the Court must be accompanied by a copy for use in the Judge's chambers. In addition, one copy of the witness and exhibit lists should be furnished to the court reporter.

4. Daily Transcripts - If transcripts will be requested during or immediately after trial, arrangements must be made with the court reporter at least **one week** before trial commences.

Attachments

DATE:

## EXHIBIT LIST

( ) Defendant

[illegible]

Case No. \_\_\_\_\_  
**PLNTF** Exhibit No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
Signature \_\_\_\_\_

Case No. \_\_\_\_\_  
**DEFT** Exhibit No. \_\_\_\_\_  
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Signature \_\_\_\_\_

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